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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,181

12/31/2003

Christine Dupuis

246772US0

5569

22850

7590

10/31/2006

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/748,181

Applicant(s)

DUPUIS ET AL.

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____   | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

Claims 1-20 are pending in this application.

#### ***Information Disclosure Statement***

The information disclosure statement filed 12/31/03 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. It should be noted that WO 00/30594 and EP 1059349 have been considered.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-8, 10-14, 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/30594.**

WO '594 discloses a hairstyling composition comprising a polymer with particular characteristics and an ionic film-forming polymer in a cosmetically acceptable medium. See abstract. The cosmetically acceptable medium is preferably composed of water or one or more

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cosmetically acceptable solvents, such as alcohols or water/solvent(s) mixtures, these solvents preferably C1-C4 alcohols and preferably ethanol. See page 21, lines 14-16. The compositions may be packaged in various forms, in particular in pump-action sprays or in aerosol containers, in order to ensure application of the composition in vaporized form or in mousse form. Such packaging forms are indicated, when it is desired to obtain a spray, a lacquer or a mousse for fixing or treating the hair. When the composition according to the invention is packaged in aerosol form for the purpose of obtaining a lacquer or a mousse, it comprises at least one propellant which can be chosen from volatile hydrocarbons, such as n-butane, propane, isobutane, pentane, a chlorinated and/or fluorinated hydrocarbon, carbon dioxide gas, nitrous oxide, dimethyl ether (DME), nitrogen or compressed air with DME being preferred. The propellant is advantageously present at a concentration of between 5 and 90% by weight with respect to the total weight of the composition in the aerosol device and more particularly at a concentration of between 10 and 60%. The compositions in accordance with the invention can be applied to dry or wet hair. See page 22, lines 4-25. WO '594 also discloses the use of at least one additive including thickeners, surfactants, fragrances, preservatives, sunscreens, proteins, vitamins, non-fixing polymers and any other additive conventionally used in cosmetic compositions intended to be applied to the hair. See page 21, lines 20-26.

Specifically, Table 1 discloses a composition comprising 2.65% avalure (an acrylic polymer), 0.35% Luvitec VPI55K72 (instant copolymer with a molecular weight of 1,200,000 and 50/50 ratio), and ethanol. The composition is packaged as an aerosol with 35% DME. Note that the species for the cosmetically acceptable medium disclosed are sufficiently limited, i.e. water, alcohol (ethanol), or water/alcohol mixture to anticipate the instant invention.

**Claims 1-8, 10, 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gross et al (5,037,632).**

Gross et al disclose a composition for setting and caring for hair comprising (a) 0.1 to 10 percent by weight of a cationic copolymer of vinylimidazolium methochloride and vinylpyrrolidone as a quarternized copolymer of the vinylpyrrolidone and (b) 0.1 to 5.0 percent by weight of tetraoxyethylene laurylether. See abstract. The polymer has a molecular weight between 40,000 and 1,000,000. The copolymer comprises 30-95% vinylimidazolium methochloride and 5-70% mol% vinylpyrrolidone. See column 2, lines 10-30. Gross discloses the use of conventional cosmetic hair additives including perfume oils, vegetable extracts, bactericides or fungicides, anti-dandruff agents, solvents for perfume oils, dyes, coloring agents, natural or synthetic resins such as chitosan derivatives, polyvinylpyrrolidone and polyvinylpyrrolidonevinylacetate copolymers. See column 2, lines 55-66. Gross discloses a aerosol device comprising 2-10% of a propellant including dimethyl ether. The composition is applied to wet or dry hair. See column 3, lines 10-50.

Specifically example 4 discloses a composition comprising 2% of the copolymer of vinylimidazolium methochloride and vinylpyrrolidone, 8% ethanol, and 88.6% water combined with a propellant comprising DME. Example 5 discloses the combination of the instant polymer with an additional fixing polymer 0.5% PVP.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/30594.**

The teachings of WO '594 have been delineated above. WO '594 teaches a hairstyling composition comprising Avalure and at least one ionic film-forming polymer including instant polymer, in a cosmetically acceptable medium. See claims. WO '594 teaches various ionic polymers including a terpolymer of crotonic acid/vinyl acetate/ vinyl tert-butylate, an anionic polymer comprising polysiloxane backbone grafted with non-silicone monomers, polyurethanes, etc. See column 13, lines 25-40 and column 12, lines 1-15. The film forming polymer or polymers are disclosed in an amount of 0.05-20%. See column 12, lines 20-30.

WO '594 does not specifically teach the combination of the instant vinylimidazolium and vinylpyrrolidone copolymer and the polymers of claim 9.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to look to the guidance provided by WO '594 and utilize a combination of film-forming polymers including the instant polymers to arrive at instant invention. For instance, it would have been obvious to add an additional film-forming polymer such as a polyurethane to composition 3. One would have been motivated to do so since WO '594 teaches the composition

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comprises Avalure and a film-forming polymer or polymers. Therefore, one would have been motivated to add an additional film-forming polymer to provide extra hold. A skilled artisan would have reasonably expected success since WO '00/30594 teaches the use of a combination of film-forming polymers.


***Conclusion***

All the claims are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is 571-272-0614. The examiner can normally be reached on M-F (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Sharmila S. Gollamudi  
Examiner  
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